As the ground floor of the premises was let for the first time at a rental of $230 per mensem, the standard rent of the ground floor was therefore $230 per mensem, and the defendant is entitled to receive that sum as lawful rent unless and until it is varied by the Rent Conciliation Board. Accordingly the plaintiff has not paid the defendant any sum "in excess of the rent which may lawfully be received" in respect of the ground floor of the premises and his claim was therefore dismissed with costs.

Claim dismissed.

Solicitors: *N. A. Christopher; R. E. Redrup.*

CHUNG KHIAW BANK LTD. v. PUBLIC PROSECUTOR

[F.C. (Barakbah L.P., Azmi C.J. (Malaya) and McIntyre F.J.) August 29, 1968]

[Kota Bharu — Federal Court Criminal Reference No. X.1 of 1968]

Road Traffic — Forfeiture of motor vehicle — Whether mandatory — Whether legal owner of vehicle has right to be heard before order of forfeiture is made — Road Traffic Ordinance, 1958, s. 92.

This was a reference under section 66(1) and 66 (6)(b) of the Courts of Judicature Act, 1964 by the High Court for determination of the following questions:—

(1) Whether forfeiture of a motor vehicle seized under section 92 of the Road Traffic Ordinance, 1958, is mandatory under section 92(4) thereof if it is proved to the satisfaction of the court that an offence against section 92(1) thereof has been committed and that the vehicle was the subject matter of the offence?

(2) Whether the true legal owner of the vehicle regardless of the answer to (1) has a right to be heard before any order of forfeiture of the vehicle may be made?

Held: (1) the court has a discretion under section 92(4) of the Road Traffic Ordinance, to forfeit the vehicle or to order its release;

(2) the court should hold an inquiry under section 407(ii) of the Criminal Procedure Code (Cap. 6) and at such such inquiry the true legal owner of the vehicle has a right to be heard.

Cases referred to:—

(1) *Gun Kim Luu* v. *Public Prosecutor* [1961] M.L.J. 35.

(2) *Mohamed Salleh* v. *Public Prosecutor* [1962] M.L.J. 6.

(3) *Gan Chye Huat* v. *Public Prosecutor* [1962] M.L.J. 27.

(4) *R.* v. *Ng Hee Weng & Ors.* [1956] M.L.J. 85.

(5) *Public Prosecutor* v. *Lim Hock Seng* [1962] M.L.J. 398.

(6) *Public Prosecutor* v. *Chuah Khay Soon* [1967] 2 M.L.J. 110.

(7) *Allen* v. *Thorn Electrical Industries Ltd.* [1967] 3 W.L.R. 858, 867, C.A.

(8) *R.* v. *Ang Eng Keat* [1953] M.L.J. 1.

(9) *How Hee Kiat* v. *The Collector of Land Revenue* (1913), 1 F.M.S.L.R. 105 at 110.

(10) *Public Prosecutor* v. *Ong Keng Seong* [1967] 1 M.L.J. 40.

(11) *Kiaw Aik Hang Co. Ltd.* v. *Public Prosecutor* [1962] M.L.J. 276.

(12) *Sing Hoe Motor Co. Ltd.* v. *Public Prosecutor* [1968] 2 M.L.J. 54.

(13) *Sajan Singh* v. *Sadara Ali* [1960] M.L.J. 52.

FEDERAL COURT.

A. Wilson for the appellant.

Dato' Wan Ismail bin Wan Mohamed Salleh (Deputy Public Prosecutor) for the appellant.

Cur. Adv. Vult.

MacIntyre F.J. (delivering the decision of the Federal Court): This is a reference under section 66(1) and 66(6)(b) of the Courts Judicature Act, 1964, by Wan Suleiman J., in Kota Bahru, High Court Criminal Miscellaneous Application No. 11 of 1967, for determination by this court of the following questions, namely:—

(1) Whether forfeiture of a motor vehicle seized under section 92 of the Road Traffic Ordinance No. 49 of 1958 is mandatory under section 92(4) thereof if it is proved to the satisfaction of the court that an offence against section 92(1) thereof has been committed and that the vehicle was the subject matter of the offence?

(2) Whether the true legal owner of the vehicle regardless of the answer to (1) has a right to be heard before any order of forfeiture of the vehicle may be made?

Section 92 of the Road Traffic Ordinance reads as follows:—

"(1) Subject to the provisions of this Part of this Ordinance no person shall use a motor vehicle, or cause or permit a motor vehicle to be used, as a public service vehicle unless there is in force, in respect of such vehicle, a valid licence granted under this Part of this Ordinance authorising such use, or otherwise than in accordance with such licence and any conditions attached thereto; and if he does so, he shall be guilty of an offence and liable on conviction to imprisonment for a term not exceeding six months or to a fine not exceeding two thousand five hundred dollars or to both such imprisonment and fine:

Provided that a person shall not be convicted of an offence against this section if he proves to the satisfaction of the court that he used the motor vehicle, the subject of the charge, as a taxi cab or hire car in an emergency for the purpose of conveying a sick or injured person to hospital or to bring medical aid to such person or for the purpose of making a police report to a police station and that he had made all reasonable efforts to hire a taxi cab or hire car for the purpose of the journey.

(2) Any motor vehicle in respect of which there has been, or there is reasonable cause to suspect that there has been committed any offence against this section may be seized by any road transport officer or any police officer not below the rank of inspector in any place.

(3) When any motor vehicle has been seized under sub-section (2) a road transport officer or a police officer not below the rank of inspector may, at his discretion, temporarily return such vehicle to the owner of the same on security being furnished to the satisfaction of such officer that the vehicle shall be surrendered to him on demand.

(4) An order for the forfeiture or for the release of any motor vehicle seized under the provisions of sub-section (2) shall be made by the court before which the prosecution with regard thereto has been held, and an order for the forfeiture of such vehicle may be made if it is proved to the satisfaction of the court that an offence against this section has been committed and that the vehicle was the subject matter of the offence, notwithstanding that no person may have been convicted of such an offence.

(5) If there be no prosecution with regard to any motor vehicle seized under sub-section (2) such vehicle shall be released at the expiration of one calendar month from the date of seizure unless it has sooner been released."

The first reported case in which a judge of the High Court expressed the view that forfeiture under section 92(4) is mandatory following a conviction was made in *Gun Kim Luu* v. *Public Prosecutor* [1] by Ong Hock Thye J. (as he then was). In a passing remark made for the benefit of magistrates he observed: "In my view, a conviction under section 92(1) leaves no option for him but to confiscate the vehicle, and I would draw the attention of all magistrates to this point." Later, Neal J. dissenting with this view held in *Mohamed Salleh* v. *Public Prosecutor*,[2] that the power of forfeiture under section 92(4) is discretionary following a conviction since the opening words of the section read: "An order for the forfeiture or for the release of any motor vehicle seized under the provisions of sub-section (2) shall be made . . ." Ong Hock Thye J. later revised his opinion, and observed in *Gan Chye Huat* v. *Public Prosecutor*: [3] "In this connection, I would take the opportunity of correcting an error in certain *obiter* observations made by me in *Guan Kim Luu* v. *Public Prosecutor*. Under section 92(4) of the Road Traffic Ordinance, 1958, the order that must be made is 'for the forfeiture or for the release of any motor vehicle seized' ".

As will be seen, there are two parts to section 92(4) of the Road Traffic Ordinance. The first part reads: "An order for the forfeiture or for the release of any motor vehicle seized under the provisions of sub-section (2) shall be made by the court before which the prosecution with regard thereto has been held", and the second part reads: ". . . and an order for the forfeiture of such vehicle may be made if it is proved to the satisfaction of the court that an offence against the section has been committed and that the vehicle was the subject matter of the offence, notwithstanding that no person may have been convicted of such an offence". These two parts stand independently of each other and could have been enacted in two sub-sections as has been done in respect of similar provisions in the Excise Act, 1961, under section 65. The first part of section 92(4) declares the forum by which an order for forfeiture or release shall be made. It was so held by the Malayan Court of Appeal in *R.* v. *Ng Hee Weng & Ors.* [4] in construing similar provisions in section 123 of the Customs Ordinance, 1952 (now repealed) which reads:—

"123. An order for the forfeiture or for the release of anything liable to forfeiture under the provisions of this Ordinance shall be made by the court before which the prosecution with regard thereto has been held and an order for the forfeiture of goods shall be made if it is proved to the satisfaction of the court that an offence against this Ordinance or any regulation made thereunder has been committed and that the goods were the subject matter of or were used in the commission of the office notwithstanding that no person may have been convicted of such offence."

It is the second part of sub-section (4) which confers the power to order forfeiture; but unlike the provision in the second part of the Customs Ordinance aforesaid which says that the court *shall* order forfeiture on the charge being proved, the relevant provision in the sub-section says that the court *may* order forfeiture. Therefore, *R.* v. *Ng Hee Weng & Ors., supra,* is not an authority for the interpretation of the second part of sub-section (4) of section 92. The first question under reference, therefore, resolves itself simply into the question whether the word "may" in that sub-section means what it says or should it be read to mean "shall" or "must"? In other words, is the power of the court to order forfeiture following a conviction under that sub-section discretionary or mandatory? We have already referred to the decision of Neal J. in *Mohamed Salleh* v. *Public Prosecutor* and the revised opinion of Ong Hock Thye J. (now F.J.) in *Gan Chye Huat* v. *Public Prosecutor*. In *Public Prosecutor* v. *Lim Hock Seng*,[5] Adams J. also held that the power was discretionary and observed that all that is mandatory under sub-section (4) is that there should be an order of forfeiture or release.

Then came the judgment of Ong Hock Sim J. in the consolidated appeals in *Public Prosecutor* v. *Teoh Gaik Beng* and *Public Prosecutor* v. *Chuah Khay Soon*,[6] holding that the power of forfeiture under sub-section (4) is mandatory following a conviction. In coming to this conclusion he cites with approval the obiter remarks of Ong Hock Thye J. (now F.J.) but ignores his recantation. He purports to follow the judgment in *R.* v. *Ngee Heng & Ors., supra,* despite the fact that under the Customs Ordinance it is expressly provided that forfeiture following a conviction is mandatory. By way of explanation for holding the view, all that he has to say is this: "The second part in my opinion is to vest the court with a power to make an order of forfeiture notwithstanding that no person

may have been convicted of such an offence upon proof to the satisfaction of the court of the matters specified. It would seem to me to be a misconstruction of the law to hold that where there had been a conviction of any person charged with an offence, an order of release may yet be lawfully made. In such an event, would the magistrate have discharged his judicial functions properly where the law provides that it may be made if found proved notwithstanding no person is convicted."

The learned judge's conclusion seems to be based on the premises that if the court could order forfeiture "notwithstanding that no person may have been convicted of any such offence", then forfeiture must follow a conviction. With respect, we think that the learned judge has read more into the section than its plain words would warrant. We think that the word "notwithstanding no person may have been convicted of any such offence", mean that a conviction is not an essential pre-requisite for an order of forfeiture. Such a provision in the law is necessary to meet the exigencies of a situation where the evidence of the offence is clear but a conviction cannot be secured as for instance by the death or insanity or escape from custody of the accused person after the institution of a prosecution. In such cases, the court may by virtue of section 92(4) order confiscation of the vehicle on receipt of satisfactory proof that it was the subject matter of the offence notwithstanding that no person may have been convicted of any such offence.

It appears to us that the learned judge has strained the language of the section in reading into it the proposition that an order for forfeiture must follow a conviction. If that was the intention of the legislature it would have clearly expressed that intent by saying that "an order for the forfeiture of such vehicle *shall* be made" instead of 'may be made'. In our opinion, "may" as used in sub-section (4) means 'may' and nothing more. To construe otherwise, could result in grave injustice and hardship to the owner of a vehicle which is stolen and then used in the commission of an offence; or to the owner under a hire-purchase agreement if the vehicle is used in the commission of an offence without his consent, knowledge and connivance. There is a presumption against the legislature intending absurdity or injustice (*Maxwell* on Interpretation of Statutes, 11th ed. p. 193). When statutory provisions are penal and are designed to take away existing legal rights such as, for instance, the right to own property as preserved by article 13(1) of the Constitution, the court will not give effect to such provision unless the intention of the legislature is expressed in clear and unequivocal language.[7]

Be that as it may, Dato' Wan Ismail who appeared before us for the public prosecutor contended that the word 'may' in the second part of section 92(4) of the Road Traffic Ordinance should be read as 'must'. He relies, firstly, on the judgment of Ong J. in the case we have already considered, and second, on the judgment of Spenser Wilkinson J. in *R.* v. *Ang Eng Keat.*[8] It was held in that case that the word 'may' wherever it appeared in section 108(v) of the Customs Enactment of 1936 should be read as 'must'. The sub-section reads as follows:—

> "(v) The magistrate shall issue a summons requiring the person asserting that he is the owner of the goods and the person from whom they were seized to appear before him, and upon their appearance or default to appear, due service of such summons being proved, the magistrate may proceed to the examination of the matter and on proof that the goods are liable to forfeiture under this Enactment may order the same to be forfeited."

The word 'may' which appears first in sub-section (v) is used to indicate a method of procedure. In *How Hee Kiat* v. *The Collector of Land Revenue,*[9] the F.M.S. Court of Appeal held that where a method of procedure is contemplated 'may' ordinarily means 'must'. The word 'may' which appears second in the sub-section appears in a different context. The learned judge came to the conclusion that 'may' in this sentence means 'must' in the light of the other relevant provisions of the Enactment. The other relevant provisions are sections 106 and sub-section (ii) of section 108. They are:—

> "S. 106. (i) All goods liable to seizure under this Enactment shall be liable to forfeiture.
>
> (ii) An order for the forfeitue of goods may be made if it be proved to the satisfaction of the magistrate that an offence against this Enactment has been committed and that the goods were the subject matter of or were used in the commission of the offence notwithstanding that no person may have been convicted of such offence."

> "S. 108 (ii) If any goods seized under this Enactment be not forfeited by order of the court before which the prosecution with regard thereto is had, or if there be no prosecution with regard thereto, such goods shall be taken and deemed to be forfeited at the expiration of one calendar month from the date of seizure unless a claim thereto has been made before that date in the manner hereinafter set forth: Provided that if any goods so seized be of a perishable nature the same may be sold and the proceeds of sale held to abide the result of any claim."

The learned judge's reason for holding that the word 'may' in sub-section (v) means 'must' is stated in his judgment as follows: "Our section 106 merely says that all goods liable to seizure under the Enactment 'shall be liable to forfeiture', but then sub-section (ii) of section 108 provides that if goods seized be not forfeited by order of the court before which the prosecution is had, or if there be no prosecution the goods shall be 'taken and deemed to be forfeited' at the expiration of one calendar month from the date of seizure unless a claim thereto has been

made before that date. In other words, the goods 'shall be forfeited' unless a claim is made. Under sub-section (iv) a claimant has to assert not only that he is the owner but also that the goods are not liable to forfeiture. I think the inference is irresistible that unless the claimant's claim is successful on both points the result must be forfeiture."

We do not feel called upon to comment upon a ruling on the interpretation of the word 'may' in another Enactment and in respect of a section which is not in *pari materia* with section 92(4) of the Road Traffic Ordinance. We take note, however, that under the Customs Enactment of 1936 the court had no power to order the release of any goods or vehicles seized under the Enactment. Under section 106 of the Customs Enactment the court is empowered to order the forfeiture of goods seized or to make no order at all. If the court does not make an order for forfeiture, then unless a claim is lodged within one calendar month of the seizure as provided under section 108(iv) "the goods shall be taken and deemed to be forfeited". The power to release the goods seized under the Enactment does not lie with the court but with the Commissioner of Customs as provided under sub-section (iv) or by the High Commissioner as provided under sub-section (vi). It is in the context of these provisions that the word 'may' was construed as meaning "must". The provisions of the Road Traffic Ordinance are clear and the court is empowered to order forfeiture or release. We see no reason, therefore, to hold that 'may' means "must" in section 92(4) on the basis of the decision in *R.* v. *Ang Eng Keat.*

It is pertinent to note that even Ong Hock Sim J. does not say that 'may' means "must" in section 92(4). He says and we quote: "The word 'may' in the second part of section 92(4) is, in my view, inserted so that the court need not make an order of forfeiture though 'proved to the satisfaction of the court that an offence against this section has been commited and that the vehicle was the subject matter of the offence' in the type of cases covered by the proviso to sub-section (1)". It seems to us that the learned judge having arrived at the conclusion that forfeiture following a conviction is mandatory is at pains to restrict the discretionary power of the court under section 92(4) to suit his argument. He thinks that the word 'may' was inserted in the section to enable the court not to order forfeiture of vehicles used in the circumstances mentioned in the proviso to sub-section (1) of section 92. With respect, cases falling under the proviso are not "offences" to merit the exercise of any discretionary power by the court to order the release of the vehicles seized.

Dato' Wan Ismail further contended that the intention of the legislature to render forfeiture following a conviction mandatory under section 92(4) could be presumed from the absence of any provision in the Ordinance itself, corresponding to sections 30, 124 and 66 of the Dangerous Drugs Ordinance, 1952, the Customs Ordinance, 1952, and the Excise Act, 1961, respectively, whereunder an innocent owner of goods or vehicles seized may apply for release to the court or to the executive authority of the State. We think that the absence of such provisions in the Road Traffic Ordinance only strengthens the view that the power of forfeiture under the Ordinance is discretionary. It must be presumed that the special provisions in the Customs, Dangerous Drugs and Exercise laws were enacted in the interest of justice, since confiscation following a conviction under those Enactments is mandatory.

The second question under reference, cannot, in our opinion, be answered regardless of the answer to the first. As already indicated our answer to the first question is that the power to forfeit a vehicle following a conviction is not mandatory. It must follow therefore that the right to hold an enquiry for the purpose of exercising that discretion is implicit in that very power itself. We are of the opinion that the court has also legislative sanction to dispose of any property seized to any person by virtue of the provisions of section 406A and 407(ii) of the Criminal Procedure Code. An order made under these provisions is a judicial order and could be made only in accordance with the legal processes by which any court arrives at a decision.

In this connection, Dato' Wan Ismail contended that on a proper interpretation of section 407(ii) of the Criminal Procedure Code the court is precluded from acting under that section since the question of forfeiture is governed by the provisions of the Road Traffic Ordinance. The Road Traffic Ordinance empowers the court at the close of a trial to forfeit or release a vehicle but is silent on the question of to whom it should be released in the event of a conviction. Therefore, in our opinion, the court has to act under section 407(ii) to release the property to the true owner if satisfied that the offence had been committed without his consent, knowledge and connivance. In so doing the court would not be transgressing any of provisions of the Road Traffic Ordinance but acting in furtherance of the objects of the Ordinance.

We were also referred to the judgment of Ali J. in *Public Prosecutor* v. *Ong Keng Seng,*[10] in which he disagreed with the ruling of Adams J. in *Kiaw Aik Hang Co. Ltd.* v. *Public Prosecutor* [11] to the effect that it is the duty of the

court to hear the owner of the vehicle sold under a hire-purchase agreement before making an order of forfeiture. Ali J. expressed his dissent firstly, on the ground, that there is no express provision in section 92(4) of the Road Traffic Ordinance to hold any enquiry, and second, on the ground, that the court is not empowered to look beyond the registered owner of the vehicle in view of the definition of an 'owner' in section 2 of the Ordinance as the registered owner. We have already dealt with the question of the court's power to hold an inquiry. As for the second point, Raja Azlan Shah J. in *Sing Hoe Motor Co. Ltd.* v. *Public Prosecutor* [12] observed "to adopt the narrow approach as applied by Ali J. in *Public Prosecutor* v. *Ong Keng Seong, ante,* in not enquiring beyond the bare fact of registration is unrealistic to be acceptable and tends to work injustice on an innocent party". With respect, we agree with these observations. Section 138(1) of the Road Traffic Ordinance reads: "For the purpose of any prosecution or proceeding under this Ordinance the registered owner of a motor vehicle shall be deemed to be the owner of that motor vehicle". The section speaks for itself. An inquiry for the purpose of releasing a vehicle to the true owner is not, in our opinion, a prosecution or a proceeding under the Ordinance. Besides, in our view, proceedings to determine the true owner is to be conducted not under the Ordinance but under section 407(ii) of the Criminal Procedure Code. That section empowers the court to order the delivery of the property seized to 'any person' and we must presume that the expression 'any person' is wide enough to embrace the true legal owner of a vehicle having regard to the dictum of the Privy Council in *Sajan Singh* v. *Sadara Ali* [13] on the question of registration of a motor vehicle as evidence of ownership that: "The registration book is not in Malaya, any more than it is in England, a document of title".

Questions answered.

Solicitors: *Wilson & Co.*

SINGAPORE HOTEL v. AIRPORT HIRE CARS

[O.C.J. (Winslow J.) September 3, 1968]
[Singapore — Civil Suit No. 458 of 1967]

Landlord and Tenant — Rent controlled premises — Recovery of — Tender of cheque postdated to after date of service of notice to quit no tender in law — Exposure to penalty, fine or forfeiture — Control of Rent Ordinance (Cap. 242), ss. 15(1)(a)(b)(h).

The plaintiffs, landlords of a rent-controlled premises, brought an action for the recovery of possession of the premises on the grounds that the defendants: (1) were in arrear in rent for more than 21 days at the date of the notice to quit; (2) knowingly committed a breach of the Local Government Integration Ordinance, 1963, and exposed the plaintiffs to a penalty, fine or forfeiture; (3) were in breach of the condition of the tenancy prohibiting the use of the premises as an office.

The defendants denied all the allegations and further contended that before January 30, 1967, the date of service of the notice to quit, all rent due had been tendered by way of a postdated cheque dated January 31, 1967, which the plaintiffs refused to accept.

Held: (1) the tender of the postdated cheque dated January 31, 1967, did not amount to a tender in law at or before January 30, 1967, the date of the service of the notice to quit;

(2) before a landlord can be said to be exposed to any penalty, fine or forfeiture, it must be shown that there was exposure to conviction, and there is no exposure to conviction unless facts exist which would support a conviction;

(3) the defendants did not commit any breach of a condition of the tenancy prohibiting the use of the premises as an office as no such condition had been imposed on the tenancy;

(4) the plaintiffs had succeeded in proving their case under section 15(1)(a) of the Control of Rent Ordinance (Cap. 242). As it was unreasonable to make an outright order for possession, the order was made subject to the condition that it be suspended for as long as the defendants pay the monthly rent regularly within 7 days of the end of every month and all arrears of rent are paid within 14 days of the date of the judgment.

Cases referred to:—

(1) *Farquharson* v. *Pearl Assurance Co. Ltd.* [1937] 3 All E.R. 124.

(2) *Hooi Chuk Kwong* v. *Lim Saw Choo* [1958] M.L.J. 5.

(3) *Ho Tong Cheong & Ors.* v. *Oversea-Chinese Banking Corpn. Ltd.* [1967] 2 M.L.J. 70.

CIVIL SUIT.

Lo Kok Siong for the plaintiffs.

T. L. Lee for the defendants.

Cur. Adv. Vult.

Winslow J.: The plaintiffs' claim is against the defendants for recovery of possession of a garage at the rear of No. 2 Tanjong Katong Road let to them at a monthly rent of $220 payable in advance.

It is also claimed that such tenancy was duly determined by a notice in writing to quit expiring on the 28th February, 1967 which was served on the defendants on the 30th January, 1967 and that the plaintiffs are not precluded from claiming recovery of possession on the following grounds:—

"(a) that at the date of the notice determining the tenancy rent lawfully due was in arrear for upwards of 21 days after the notice of demand in writing has been served on the defendants and there was no tender thereof at or before such date; and

(b) that the defendants knowingly have committed a breach of the provisions of the Local Government Integration Ordinance, 1963 and/or the rules or bylaws made thereunder affecting the premises which expose the plaintiffs to a penalty fine or forfeiture.

(c) that the defendants without the approval of the plaintiffs have converted into and/or used the said premises as office premises and/or a dwelling house and